IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6392 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

KALPESH ALIAS KALI KANUBHAI BHAVSAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR.BHALJA, ASSISTANT GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/01/99

ORAL JUDGEMENT

The prayers in this writ petition under Article 226 of the Constitution of India is to quash by a writ of certiorari the detention order dated 22.6.1998 passed by the Commissioner of Police, Ahmedabad City under section 3 of the Prevention of Antisocial Activities Act (for short 'PASA') and for immediate release of the petitioner.

The brief facts are that the Detaining Authority

aforesaid considered seven registered offences inter alia under sections 379 and 392 of the IPC and further considered the statements of two confidential witnesses and from the above material he was subjectively satisfied that the petitioner is a dangerous person and his activities are prejudicial for maintenance of public order. Accordingly the impugned order of detention was passed.

The learned Counsel for the petitioner has challenged, in the course of arguments, the impugned detention order only on three grounds. The first is that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. The second was that there was delay on the part of the Advisory Board in forwarding representation of the detenu and the third was that the privilege claimed by the Detaining Authority under section 9(2) of the PASA has been wrongly claimed which was not available to the Detaining Authority.

Coming to the last ground I do not find any merit in this contention. It was argued that the detention order was passed on 22.6.1998 whereas two confidential witnesses were examined by the police on 19.6.1998 and the Detaining Authority examined them again to ascertain whether the fear in the mind of the witnesses was real and genuine or not. Since the detention order was passed on the same day, when the Detaining Authority satisfied himself regarding genuineness of fear in the mind of the witnesses the right of detenu to make effective representation was taken away. Firstly, I am unable to appreciate this argument and secondly this argument has no substance for the obvious reason that the right to make representation against the detention order accrues to the detenu only after the detention order is passed and is served on the detenu and not before that. There is no prohibition on the part of the Detaining Authority to satisfy himself about the genuineness of fear in the mind of the witnesses on the same day on which detention order was passed after arriving at such satisfaction. Thus, on this ground, it cannot be said that the privilege claimed by the Detaining Authority is illegal. The grounds of privilege are given in the grounds of detention and the Detaining Authority was justified in claiming privilege under section 9(2) of the Act in not disclosing the names and addresses of the two confidential witnesses.

The next contention has been delay in forwarding representation to the State Government. There is

controversy whether the representation was made on 4.7.1998 or on 6.7.1998. It is however, now clear that the signature of the detenu was put on the representation on 6.7.1998 and it will be deemed to be representation dated 6.7.1998 and not representation dated 4.7.1998. It was argued that representation was made to the Detaining Authority to the Advisory Board as well as to the State Government but this is not borne out from ground (g) of the writ petition whereon vague mention is made that the representation dated 4.7.1998 was made only to the authorit[[y and not to the authorities. It is also not mentioned in the writ petition that representation was also made to the State Government.

The counter affidavit of the Detaining Authority shows that the representation dated 4.7.1998 bearing signature of the detenu on 6.7.1998 before Jailor was received in the office of the Detaining Authority on 17.7.1998. The detention order was already approved by the State Government on 3.7.1998. As such on 17.7.1998 the Detaining Authority had no jurisdiction to consider the representation. Accordingly, representation was forwarded to the State Government and the detenu was intimated to this effect on 18.7.1998. Thus, the detaining authority did not commit any delay in forwarding representation to the State Government. The counter affidavit of Shri J.R.Rajput, Under Secretary to the Government of Gujarat indicates that only one representation sent by post through Superintendent, District Jail, Bhavnagar was received in the Home Department on 17.7.1998 which was rejected on 18.7.1998 and order of rejection was communicated on the same date to the detenu. Thus, it is clear that no representation sent directly to the State Government was received by the State Government. There was no delay on the part of the State Government in dealing with the representation received in its Home Department on 17.7.1998.

No blame can be fastened to the Secretary, PASA Adsvisory Board. He was not obliged to forward the representation of the detenu to the State Government. Thus, there was no delay in forwarding the representation nor was there any delay in dealing with the representation and as such on this ground the impugned order cannot be quashed.

Last ground has been that the activities of the petitioner cannot be considered to be prejudicial for maintenance of public order. The petitioner has been described as dangerous person within meaning of section 2(c) of PASA by the Detaining Authority. For this he

considered seven registered cases under sections 379 and 392 IPC. List of such cases is given in the grounds of detention. It is thus clear that the petitioner repeatedly committed offences punishable under sections 379 and 392 of IPC. The repetition of such illegal activities was rightly considered by the Detaining Authority and within the definition of dangerous person under section 2(c) of PASA, the Detaining Authority has rightly concluded that the petitioner is a dangerous person. Not only this, the Detaining Authority also considered the statements of two confidential witnesses and further found from these statements that the petitioner was dangerous person in as much as he was repeating his illegal activities of committing theft of scooters and gold chains etc. Thus, subjective satisfaction of the Detaining Authority that the petitioner is dangerous person is supported from the material on record.

However, a person who is dangerous person within meaning of section 2(c) of PASA cannot be preventively detained under the Act unless the requirement that his activities are prejudicial for maintenance of public order is also met with. For this, seven cases registered under various sections of the IPC did not indicate that on these occasions public order was disturbed viz. even tempo of the life of the community in the area in which these offences were committed was disturbed. Commission of theft and robbery create law and order problem for which the petitioner was rightly booked under these sections and investigation is going on. It was informed in the course of argument that in two cases report under section 169 of the Code of Criminal Procedure has been submitted by the police in favour of the petitioner. However, for this there is no material on record. Be that it may, it is clear that these seven cases could not be pressed in service for coming to the conclusion that the activities of the petitioner while committing these offences were prejudicial for maintenance of public order. Snatching of gold chains and theft of motor cycles on these occasions on the face value could not have given impression that these activities were prejudicial for maintenance of public order.

Then remains statements of two secret and confidential witnesses.

The first witness narrated about the incident dated 14.5.1998 which took place at 7.00 p.m. The witness was at the place of his business but the locality in which the place of business of the witness is situated

is not disclosed in the grounds of detention. At that time, the petitioner along with the two companions came to the witness along with gold chains and asked the witness to keep the same and demanded Rs.2,000/-. The witness suspected it was stolen gold chain hence he refused to receive the same. The petitioner became excited and with the help of two companions dragged the witness to open place near Tripathi Hall and beat him. Persons of the nearby locality collected. Knife was shown to the witness. He was threatened and Rs.1,000/were taken from his pocket. The petitioner ran towards the people who collected at the spot with open knife. Thereafter, those persons started running due to which atmosphere of fear was created in the area. It is not stated that due to this incident even tempo of the life of the community or the locality was disturbed or affected. When such scuffle takes place or such incident takes place atmosphere of fear is likely to be created but that cannot be equated with the situation disturbing public order viz. disturbing peace and tranquillity of the area and even tempo of the life of the community. It was incident between two individuals which was witnessed by the persons who collected at the spot and if they were chased and they ran for safety it cannot be said that even tempo of the locality was disturbed. Hence, this activity was not prejudicial for maintenance of public order.

The second incident is dated 30.5.1998. On this date the petitioner along with his two companions went to the place of the witness but it is not specified whether it was residential place or business place. The petitioner offered one scooter and demanded Rs.5,000/from the witness. The witness doubted that the scooter was stolen. He refused to take the same. The petitioner again became excited and with the help of his companions dragged the witness, beat him and threatened by showing knife. On such vague statements the Detaining Authority entertained subjective satisfaction that this incident on vague narration was prejudicial for maintenance of public order. Again usual recital has been made in the statement of the witness that he was beaten by the petitioner and the persons who collected at the spot were shown knife and daily routine of the public was disturbed and atmosphere of fear was created. This incident again cannot be said to have disturbed even tempo of the life of the community or life of the locality nor it can be said that peace and tranquillity of the area was disturbed. Consequently, on the basis of the statements of these two witnesses it cannot be said that the activities of the petitioner were prejudicial for

maintenance of public order. If this is so, the petitioner, who may be a dangerous person could not be detained under PASA. He is already under detention and is in judicial custody in criminal cases. The cases registered against him are mentioned in the grounds of detention.Since the basic ingredient that the activities being prejudicial for maintenance of public order is missing the petitioner could not have been detained under PASA especially in view of section 3(4) and proviso to the aforesaid sub-section of PASA.

In the result the petition succeeds on this limited ground. The detention order therefore cannot be sustained. The petition is accordingly allowed. The impugned order dated 22.6.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt